

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(ARUSHA DISTRICT REGISTRY)**

AT ARUSHA

CIVIL REFERENCE NO. 4 OF 2020

(^B/v High Court of Arusha Taxation Cause No. 21 of 2017 (Dc) Civil Appeal No. 25 of 2013)

JULIUS MWARABU.....APPLICANT

VERSUS

NGAO GODWIN LOSERO.....RESPONDENT

RULING

20/05/2021 & 30/07/2021

GWAE, J

Before the Deputy Registrar of the court, the applicant presented a bill of costs after he had been granted costs by this court (**Moshi, J**) vide Dc. Civil Appeal No. 25 of 2013. The Deputy Registrar (DR) in his decision found that, the applicant was not entitled to any costs on the grounds that, it was not fair and not within the scales. Relying on order 48 of the Advocates Remuneration Order, 2015, the DR dismissed the applicant's application.

Aggrieved by the decision of the Deputy Registrar of the court, the applicant has preferred this application for reference requesting this court to

ascertain validity of the dismissal order dated 30th November 2017 adversely entered by the DR.

Through his affidavit, the applicant stated that it was wrong for the DR to disallow his costs presented before him adding that, he was entitled to Tshs. 1,000,000/= plus transport costs incurred including disbursement.

Opposing this application, the respondent filed his counter affidavit in which he stated that, the DR rightly dismissed the applicant's taxation cause.

At the hearing of this matter, both applicant and respondent appeared in person, unrepresented. Both relied on their respective affidavits. Nevertheless, the respondent verbally added that the applicant ought to have established the alleged erroneous calculations.

Examining the presented bill of costs on the 25th May 2017 which is divided into three items, notably instruction fees (Tshs. 4,500, 000/=), transport costs by advocate (Tshs. 350, 000/=) as well as transport costs by the applicant (Tshs.30, 000/=) and Disbursement (Tshs.19,000/=) All items making a total of Tshs. 4, 899,000/=. The taxing officer heavily relied on the Order 48 of the Advocates Remuneration Order which reads;

"When more than one-sixth of the total amount of a bill of costs exclusive of the court fees is disallowed, the party

presenting the bill for taxation shall not be entitled to the costs of such taxation”

See also Rule 56 of the Advocates’ Remuneration and Taxation of Costs Rules.

The essence of having this provision of the law in place is a prohibition of exaggeration or inflating costs of cases by litigants who aim at enriching themselves in cases where they emerge victorious. However, in my view, that discretion should be applied in special circumstances. I am saying so simply because there is no dispute that the applicant enjoined legal services from a private advocate and not from legal aid or on pro bono basis. In our instant case, it is evidently clear that the DR. opined to dismiss the applicant’s bill of costs after he had arrived at the bill of Tshs. 999,000/= far beyond one-sixth of the presented bill (Tshs, 4,899,000/=). Perhaps would like to subscribe to a decision in **Tanzania Rent a Car Limited v. Peter Kimuhu**, Civil Reference No. 9 of 2020 (unreported) where a single justice of Appeal held;

“As argued by the counsel for the parties, it is a general, rule that the award of instruction fees is peculiarly within the discretion of a taxing officer and the court will always be reluctant with the decision unless it is proved that the taxing officer exercised his discretion injudiciously”.


The taxing officer relied on the 11th Schedule item 1 (L) of the Order as explained above and he eventually awarded the applicant Tshs. 400,000/= being instruction fees out of Tshs. 4,500,000/= presented before him. I would allow Tshs. 1,000,000/= as instruction fees instead of Tshs.400,000/= in order to enhance access to court and since it is certainly that, the applicant must have enviably incurred expenses

in hiring an advocate and to occasion justice in the particularly case (**See Premchand Raichand LTD and another vs. Quarry Services of East Africa Ltd and others** (1972) 1EA 162).

Having taken that direction, the decision of the taxing officer is hereby quashed and set aside. The applicant is now entitled to Tshs, 1,000,000/= being instruction fees, Tshs, 380, 000/=being transport costs, Tshs. 200, 000/=and Tshs. 19,000/= as disbursement. Making a total of Tshs. 1, 599,000/=. No order as to costs is made.

It is so ordered




M. R. GWAE
JUDGE
30/07/2021